

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
RACHEL WITLIEB BERNSTEIN,	:
	:
Plaintiff,	:
	:
	:
v.	:
	:
BILL O'REILLY and	:
FOX NEWS NETWORK LLC,	:
TWENTY-FIRST CENTURY FOX, INC.,	:
Defendants.	:
-----X	

Civil Action No. 1:17-cv-9483(DAB)

**PLAINTIFF RACHEL WITLIEB
BERNSTEIN'S SECOND AMENDED
COMPLAINT AND JURY DEMAND**

Plaintiff, **RACHEL WITLIEB BERNSTEIN**, through her attorneys, Smith Mullin, P.C., files this separate Second Amended Complaint, per the Court's Order dated September 25, 2018, Civ. Action No. 17-cv-9483(DAB), [Dkt. No. 81], allowing this amendment and severing plaintiff Bernstein's claims from those of the other two plaintiffs, and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action by the plaintiff, Rachel Witlieb Bernstein, ("Plaintiff" or "Ms. Bernstein,"), against defendants Bill O'Reilly ("Defendant" or "O'Reilly") and Fox News Network LLC ("Defendant" or "Fox News") and Twenty-First Century Fox, Inc. ("Defendant" or "21st Century Fox"). In addition to suing for defamation, Plaintiff has additional claims for breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference.

THE PARTIES

2. Plaintiff, Rachel Witlieb Bernstein, is a resident and citizen of California.

3. Defendant Bill O'Reilly is a citizen of New York State residing in Long Island.

4. Defendant Fox News is a cable television news and entertainment company that operates, among other things, the Fox News Network, Fox Business News, Foxnews.com and, until recently, Fox News Latino.

5. Defendant Fox News is a wholly owned subsidiary of its parent company, Defendant 21st Century Fox, and maintains its principal place of business in New York, New York, where the acts complained of occurred. Rupert Murdoch was, and is, the Chairman of Fox News and acting CEO, as well as the co-Executive Chairman of 21st Century Fox.

6. Defendant 21st Century Fox is a corporation incorporated in the State of Delaware with its principal place of business in New York, New York.

7. Defendant 21st Century Fox completely controls and dominates its subsidiary, Fox News, with respect to all of the events set forth herein.

8. Because of the serious public relations and litigation matters, including the drop in shares price and revenue caused by Defendants' own actions in fostering and covering up years of sexual harassment, discrimination and retaliation at Fox News, Defendant 21st Century Fox has, at all times relevant hereto, taken over and directed all public relations and litigation matters relating to its subsidiary, Fox News, concerning the numerous sexual harassment, discrimination and retaliation claims that have plagued Defendants. In fact, after the former CEO Roger Ailes of Fox News was forced out on or

about July 21, 2016 because of numerous sexual harassment complaints made against him, Mr. Murdoch took over Fox News as the acting CEO and has remained in that position at Fox News to this day.

9. In addition, Defendant 21st Century Fox, has indicated in its 2017 Annual Report to its shareholders that it – the Company – has taken over control of these matters when it wrote:

Fox News Channel

The Company and certain of its current and former employees have been subject to allegations of sexual harassment and discrimination and racial discrimination relating to alleged misconduct at the Company's Fox News Channel business. The Company has settled some of these claims and is contesting other claims in litigation. To date, none of the amounts paid in settlements or reserved for pending or future claims, is individually or in the aggregate, material to the Company. The Company has also received regulatory and investigative inquiries relating to these and stockholder demands to inspect the books and records of the Company which could lead to future litigation....

10. At all times pertinent hereto, Defendant O'Reilly was, and remains, an agent, representative and employee of Defendants Fox News and 21st Century Fox.

11. Even after O'Reilly was taken off the air at Fox News as a host of his own cable program on April 19, 2017, O'Reilly remained and remains contractually bound to defendants under his employment contract with Defendants as that contract has yet to expire.

12. Defendants Fox News and 21st Century Fox continued to promote and maintain the profile of defendant O'Reilly by having him on the air and allowing its on-air hosts to provide a platform for O'Reilly, including for the defamation described herein.

JURISDICTION

13. This Court has diversity jurisdiction over this action pursuant to 28 *U.S.C.* § 1332 in that the plaintiff's citizenship is completely diverse from that of the defendants and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

VENUE

14. Venue is proper in this District under 28 *U.S.C.* § 1391(b)(2) because defendants Fox News and 21st Century Fox are based in New York City, defendant Bill O'Reilly lives in Long Island, New York, and the actions complained about herewith were authorized by Fox News Network in New York. Additionally, the contract at issue was entered in New York City, the contract provides that New York law applies, and the conduct at issue took place in New York City.

COUNT ONE

(BREACH OF CONTRACT)

A. Rachel Witlieb Bernstein

15. In July of 2002, plaintiff Rachel Witlieb Bernstein entered into a Settlement Agreement and Release releasing Fox News and Bill O'Reilly of all claims, including claims of discrimination. The Agreement provides as follows:

5(f) Non-Disparagement: Witlieb and Fox each agree not to disparage, trade libel, or otherwise defame each other, and in the case of Fox, Witlieb agrees not to disparage, trade libel, or otherwise defame its officers or employees, including without limitation, Bill O'Reilly. In the case of Witlieb, for purposes of this Paragraph 5(e), the term "Fox" shall mean the released parties referenced in Paragraph 4(a) above, including Bill O'Reilly, and said released parties agree not to disparage, trade libel, or otherwise defame Witlieb.

16. The Agreement further provides:

Confidentiality: Wittlieb (sic) and Fox, and their respective legal counsel, and any other person acting on Wittlieb (sic) or Fox's behalf, or through either of them, shall not disclose to any person the contents of this Agreement or the facts or allegations that gave rise to this Agreement. If asked, each of Wittlieb (sic) and Fox and their respective legal counsel may say only 'The matter has been resolved (or settled)', without elaboration. Notwithstanding the foregoing, however, Wittlieb (sic) and Fox, and their respective counsel, shall not be prohibited from making such disclosures of these matters to any person who has a legal necessity to know (as, for example, in the case of a valid subpoena) and to their respective accountants, and in Wittlieb's (sic) case, to her immediate family, but in each such instance Fox and Wittlieb (sic) shall specifically make best efforts to prevent those persons from repeating those disclosures to any other person. Either Wittlieb (sic) or Fox's breach of this provision shall constitute a material breach of this Agreement.

17. Plaintiff Bernstein has in no way violated any of the provisions of the respective Settlement Agreement.

18. On April 1, 2017, The New York Times reported that "Bill O'Reilly Thrives at Fox News, Even as Harassment Settlements Add Up." The article by Emily Steel and Michael S. Schmidt revealed that defendant O'Reilly and/or defendant Fox News had paid five women about \$13 million to forego litigation and never speak about what O'Reilly did to them. The article specifically mentioned plaintiff Bernstein by name:

Fox News has been aware of complaints about inappropriate behavior by Mr. O'Reilly since at least 2002, when Mr. O'Reilly stormed into the news room and screamed at a young producer, according to current and former employees, some of whom witnessed the incident.

Shortly thereafter, the woman, Rachel Witlieb Bernstein, left the network with a payout and bound by a confidentiality

agreement, people familiar with the deal said. The exact amount she was paid is not known, but it was far less than the other settlements. The case did not involve sexual harassment.

19. Ms. Bernstein was not the source of the information printed in The New York Times.

20. Ms. Bernstein at all times relevant to this lawsuit was a member of a small identifiable group of five women named in the April 1, 2017 New York Times article.

B. Defendants' Disparaging and Defamatory Statements

21. In the April 1, 2017 New York Times article, Mr. O'Reilly violated the non-disparagement clause in Ms. Bernstein's settlement agreement and defamed her by stating:

Just like other prominent and controversial people, I'm vulnerable to lawsuits from individuals who want me to pay them to avoid negative publicity. In my more than 20 years at Fox News Channel, no one has ever filed a complaint about me with the Human Resources Department, even on the anonymous hotline.

* * *

The worst part of my job is being a target for those who would harm me and my employer, the Fox News Channel. Those of us in the arena are constantly at risk, as are our families and children. My primary efforts will continue to be to put forth an honest TV program and to protect those close to me.

22. Defendants continued their defamation of the plaintiff, including:

(a). On April 19, 2017, defendant Fox News defamed plaintiff in an article on Fox letterhead written by full-time Fox analyst, Howard Kurtz, and published on foxnews.com, and republished throughout the world. The publication noted that O'Reilly was meeting with the Pope as part of a VIP tour of the Vatican and sympathetically portrayed and quoted

Defendant O'Reilly as "disheartened" that he was "parting ways with Fox News" due to "completely unfounded claims" which are part of a "liberal smear campaign" and a "brutal campaign of character assassination that is unprecedented in post-McCarthyist America."

This article is still available on line <http://www.foxnews.com/entertainment/2017/04/19/fox-news-drops-bill-oreilly-in-wake-harassment-allegations.html>.

(b). That same publication on foxnews.com contains a video link to a statement read by an anchor on the Fox News TV program The Factor in which she said:

Finally tonight, it is the end of an era here at the Fox News Channel. As we mentioned earlier, Bill O'Reilly is leaving this chair and this network after more than 20 years. Bill has been the undisputed king of cable news and for good reason. He is an incredibly talented broadcaster who raised the bar for interviewers everywhere. He has also held his stature, exacting standards in his quest to put the best possible program on the air and they are great. And you his audience responded in record numbers making The Factor the number one cable news show for more than 16 years. He has also been loyal and we can't tell you how much that means to everyone on The Factor. In a memo to the staff today, Rupert, James and Lachlan Murdoch who run Fox News, described Bill this way: "By rating standards, Bill O'Reilly is one of the most accomplished TV personalities in the history of cable news. In fact, his success by any measure is undisputable. We wish him the very best."

23. Defendant O'Reilly continued his disparagement and defamation of Ms. Bernstein on O'Reilly's website and in comments published by The Hollywood Reporter on April 21, 2017. Defendant O'Reilly stated:

But most importantly, I'm a father who cares deeply for my children and who would do anything to avoid hurting them in any way. And so I have put to rest any controversies to spare my children.

The worst part of my job is being a target for those who would harm me and my employer, the Fox News Channel. Those of us in the arena are constantly at risk, as are our families and children. My primary efforts will continue to be to put forth an honest TV program and to protect those close to me.

24. These statements also were published in whole or in part by numerous media outlets including, but not limited to, Newsweek, the Washington Post, NBCnews.com, New York Magazine, Money Magazine, CNN.com, CNBC.com, Vanity Fair, the LA Times, the Washington Examiner, Huffington Post, and the Chicago Tribune. These statements were published to millions of people.

25. Defendant Fox News published a statement through its parent company, Defendant 21st Century Fox, defending defendants O'Reilly and Fox as well as 21st Century Fox on April 1, 2017, the same date The New York Times story exposing O'Reilly's years of abuse of women was published:

Notwithstanding the fact that no current or former Fox News employee ever took advantage of the 21st Century Fox hotline to raise a concern about Bill O'Reilly, even anonymously, we have looked into these matters over the last few months and discussed them with Mr. O'Reilly. While he denies the merits of these claims, Mr. O'Reilly has resolved those he regarded as his personal responsibility. Mr. O'Reilly is fully committed to supporting our efforts to improve the environment for all our employees at Fox News.

26. In repeating that defendant O'Reilly denied the merits of the claims of those named in the article in The New York Times, defendants Fox News and 21st Century Fox defamed plaintiff. Defendants Fox News and 21st Century Fox knew that numerous witnesses saw O'Reilly abuse and mistreat Ms. Bernstein and that video footage supported her claims.

27. Defendants Fox News, 21st Century Fox and O'Reilly disparaged and defamed the plaintiff by falsely claiming that she did not complain to the company about O'Reilly's illegal actions. Contrary to defendants' false statements, Ms. Bernstein repeatedly complained to Fox Human Resources, Bill Shine, and other Fox executives about O'Reilly's mistreatment. As defendants know, there was no "hotline" when plaintiff Bernstein was employed. 21st Century Fox was not the parent company of Fox News until 2013.

28. Defendant Fox News did not have clear mechanisms to report harassment and abuse and employees, including Suzanne Scott, President of Programming, were not aware of any hotline until recent years, and certainly not a 21st Century Fox hotline prior to 2013, if then.

29. The policy manual at Fox News provides that complaints can be brought to the legal department (Dianne Brandt during all relevant times).

30. By making the repeated false statements that plaintiff (a member of a small identifiable group) never complained, defendants O'Reilly, Fox News and 21st Century Fox disparaged and defamed plaintiff, portraying her as a liar and extortionist who had concocted complaints and never gave the company the opportunity to investigate them in a timely way. In fact, defendants Fox News and 21st Century Fox chose to get rid of women who complained about harassment and abuse and insist on their silence while continuing to employ defendant O'Reilly, allowing him to continue his harassment and abuse of female Fox employees.

31. Defendants' false statements that plaintiff never complained was published by numerous news outlets throughout the country making it available to millions of people.

32. In the statements above, defendant O'Reilly portrayed himself as a "target" and claimed that complaints against him are extortionate. This is false. In fact, he is a serial abuser and plaintiff's complaints about him were far from extortionate.

33. Defendant O'Reilly was employed by Fox News and was an agent and representative of defendant 21st Century Fox when he breached the non-disparagement and confidentiality clauses of Ms. Bernstein's Settlement Agreement.

34. Defendants Fox, 21st Century Fox and O'Reilly materially breached the Agreement by making statements other than the agreed-upon statement and by issuing false, disparaging and defamatory statements.

35. Defendants knew that plaintiff Bernstein was forced by defendants to sign the non-disparagement and confidentiality clauses and would be afraid to answer defendants' false, disparaging and defamatory statements.

36. Defendant Fox News participated in and authorized its employee Bill O'Reilly to breach the contract by disparaging Ms. Bernstein.

37. Defendants Fox News and 21st Century Fox participated in and authorized its employee and agent Bill O'Reilly to defame plaintiff Bernstein.

38. Defendant Fox News breached its agreement with plaintiff Bernstein in making a statement other than the statement specifically stipulated in her settlement agreement.

39. Defendants Fox News breached its contract with plaintiff Bernstein by allowing and authorizing its employee Bill O'Reilly to disparage and defame Ms. Bernstein and to make statements other than those to which the parties agreed.

40. On September 13, 2017, defendant Bill O'Reilly again falsely stated to The Hollywood Reporter that "no one was mistreated on my watch." This statement falsely portrayed the plaintiff and others (the small group identified in the April 1, 2017 New York Times article) as liars.

41. Also on September 13, 2017, defendant O'Reilly stated to The Hollywood Reporter that "once you get a famous name, and once you're in the political arena, the combination is devastating. If they can get you, they're going to get you." O'Reilly presented himself as a victim of a vast conspiracy and not a serial abuser and coward hiding behind the non-disclosure agreements he forced his victims to sign.

42. O'Reilly portrayed the small group of abused women identified in the April 1, 2017 New York Times article, including Ms. Bernstein, in a false light, defamed and disparaged their character, calling into question their motives for objecting to O'Reilly's abuse and ultimately being forced out at Fox News with a Settlement Agreement.

43. On September 18, 2017, defendant O'Reilly was a guest of Fox Anchor Sean Hannity on Hannity's radio show, "The Sean Hannity Show." On that September 18, 2017 radio show, O'Reilly defamed Plaintiff by portraying himself as a "victim" of women who falsely accused him of harassment and made claims against him, that he had conducted an investigation into many of the women who had reported him and it produced "shocking results" and that he was "the latest victim" of a progressive campaign aimed at getting him off the air. O'Reilly continued to claim:

- that after his "investigation" he would give the public "facts," "no he said she said. Facts. Cold stone facts. Shocking the defamation that can occur."

- Clearly referring to the harassment claims made against him in The New York Times article, O'Reilly said, "They don't care if it's true or not. Allegations become facts."
- By making such false statements, O'Reilly was referring to Plaintiff, a member of the small group of women who were previously identified in the said New York Times articles, in yet another attempt to portray Plaintiff as a liar, who could not be believed, who, along with other women, made false claims against him.

44. Fox News' website promotes its employee' Sean Hannity's podcasts, radio show and his website. Specifically, by clicking on the link, "You want more of Hannity?" on Fox's website, it provides a direct link to the website, "SeanHannity.com" which broadcasts' Sean Hannity's radio show including the one from September 18, 2017. Defendant Fox News by providing a link to the Sean Hannity website which includes his radio show, is a "publisher" of the September 18, 2017 defamatory statements made by O'Reilly.

45. Defendant O'Reilly's defamatory campaign against Plaintiff continued on September 19, 2017 when he appeared on the Today show, a daytime TV show, and was interviewed by Matt Later. During that interview, in which he was asked about The New York Times article and the women who had made complaints of harassment and misconduct against him, O'Reilly defamed Plaintiff repeatedly, including when he said:

MR. O'REILLY: I've been in this business, I've worked for 12 companies; not one time did I have any interaction with HR or any complaints filed against me.

* * *

MR. O'REILLY: ...every allegations is conviction...Every allegations in this area is a conviction. They don't look for the truth.

* * *

MR. LAUER: But you were also named. [in the women's lawsuits].

MR. O'REILLY: I was named in a few of them. A few of them.

MR. LAUER: * * * -- have you done some self-reflection and have you looked at the way you treated women that you think now or think about differently now than you did at the time?

MR. O'REILLY: My conscience is clear. What I have done is organized a legal team to get the truth to the American people, so if you to, um, newsmag.com or billoreilly.com, ***

* * *

MR. O'REILLY: You know, nobody's a perfect person, but I can go to sleep at night very well knowing that I never mistreated anyone on my watch in 42 years.

46. The above-referenced statements made by O'Reilly on The Today Show were false.

47. By repeating that he did not have "any complaints filed against me" and that "he never mistreated anyone on my watch in 42 years" and that "his legal team [would] get the truth to the American people" O'Reilly's statements portrayed plaintiff as a liar who had brought unfounded complaints against him.

48. On October 21, 2017, Emily Steel and Michael Schmidt revealed in another New York Times article that in January 2017, defendant O'Reilly paid Fox News analyst Lis Wiehl \$32 million in exchange for a release of claims of repeated harassment, a non-consensual sexual relationship, and receiving unwanted pornographic e-mails or texts. The article stated that the settlement required Ms. Wiehl to sign a non-disclosure agreement and to destroy communications between O'Reilly and Wiehl.

49. The New York Times also reported that in February 2017, one month after O'Reilly agreed to pay Ms. Wiehl \$32 million in exchange for a Release of claims against him and the company, Fox News, aware of the settlement, signed a four year contract with O'Reilly paying him \$25 million a year.

50. In response to the new reporting, Mr. O'Reilly made more false and defamatory statements when questioned about the numerous settlements he and Fox had entered into with women, by again stating "I never mistreated anyone." In fact, he mistreated Ms. Bernstein frequently and in front of numerous witnesses. Defendants' false statement disparaged and defamed Ms. Bernstein by portraying her as a liar.

51. In making the statement "I never mistreated anyone," defendant O'Reilly defamed plaintiff Bernstein and others, members of the small group about which O'Reilly was clearly speaking.

52. In October of 2017, O'Reilly added that the claims against him were "politically and financially motivated." He also stated that he had "resolved matters privately because he wanted to protect his children from the publicity." These false statements portrayed plaintiff in a false light and disparaged her character, in fact calling her a liar, political operative and extortionist.

53. In fact, Mr. O'Reilly is lying and covering up the truth. He mistreated Ms. Bernstein. She was forced out of her job at Fox News and paid a settlement because of his mistreatment. She did go to HR and other company executives to complain about him several times. Fox News took no action to protect plaintiff from O'Reilly. There were many witnesses to her mistreatment, some of which was recorded. She was not politically or financially motivated to seek legal redress for O'Reilly's abuse.

54. In October 2017, Mr. O'Reilly made several public appearances to promote a new book. During those public appearances, he stated that the complaints made against him at Fox News by women who received settlements (an obvious reference to the small group

identified in the April 1, 2017 New York Times article) were “a political and financial hit job.” This defamatory and disparaging statement is false. Plaintiff Bernstein settled her claims and left Fox News because of severe mistreatment, harassment and abuse by Mr. O’Reilly, as he knows.

55. In October 2017, Mr. O’Reilly made several public appearances to promote a new book. During those public appearances, he stated that the complaints made against him at Fox News by women who received settlements (an obvious reference to the small group identified in the April 1, 2017 New York Times article) were “a political and financial hit job.” This defamatory and disparaging statement is false. Plaintiff Bernstein settled her claims and left Fox News because of severe mistreatment, harassment and abuse by Mr. O’Reilly, as he knows.

56. Defendants Fox News and O’Reilly knew plaintiff’s settlement was among numerous examples of settlements entered in order to keep quiet O’Reilly’s abuse of women and the atmosphere at Fox which enabled such abuse. Despite this knowledge, defendant Fox News issued a statement designed to disparage and defame plaintiff by falsely claiming that she never complained about O’Reilly’s abuse.

57. On or about October 18, 2017, defendant O’Reilly held a press conference at the office of his lawyers with two lawyers in attendance. The press conference was attended by Emily Steel and Michael Schmidt of The New York Times, which in print and online reaches millions of readers around the world.

58. On October 21, 2017, The New York Times reported that defendant O’Reilly was recorded on October 18, 2017 making the following false, disparaging and defamatory

statement in a taped on-the-record interview with the New York Times: "I've been in the business for 43 years and I've never had a complaint filed by anyone at 12 different companies."

59. On October 23, 2017, The New York Times posted a podcast including an audio recording of defendant O'Reilly's on-the-record statements at that press conference he held at his lawyer's office on October 18, 2017. In that press conference, New York Times reporter Michael Schmidt asked if O'Reilly wanted to address anything in the 2017 article. O'Reilly claimed that the settlement figures were wrong, and falsely stated:

Well, it's been a horrendous experience. I've been in the broadcast business, journalism business 43 years. I've never had one complaint filed against me by a coworker, in any Human Resources department in 43 years. And that encompasses 12 different companies.

So, all of a sudden, all this stuff happens, and the pain it brings to my children is indescribable. Indescribable. And I would give up my life to protect my children, but I find myself not able to protect them because of things that are being said about me, their father.

* * *

...Eric Bolling's son is dead. He's dead. Because of allegations made, in my opinion, and I know this to be true, against Mr. Bolling. No game.

60. Defendant O'Reilly's above-comments were false, defamatory and meant to portray himself as a victim. New York Times reporter Emily Steel noted that during the interview defendant O'Reilly claimed there was a "left wing conspiracy that was behind his ouster and that he had been organizing a legal team to get the truth out to the American people." Defendant O'Reilly then stated:

... we have physical proof that this is bullshit. Bullshit. Okay? So, it's on you, if you want to destroy my children further. All right? Because it's all crap.

* * *

So why don't you be human beings for once. This is horrible. It's horrible what I went through, horrible what my family went through. This is crap, and you know it. It's politically and financially motivated, and we can prove it, with shocking information.

61. On October 23, 2017, Defendant O'Reilly appeared on Glenn Beck's radio program, full audio recording available at, <https://soundcloud.com/glennbeck/10-23-17-bill-oreilly-bonus>, and O'Reilly again defamed plaintiff Bernstein with the following false comments:

Yeah, well, I was in the, uh, I have been in the broadcast business for 43 years, 12 different companies. Never one time was there any complaint filed against me with Human Resources or anybody's legal team, nothing zero.

20 years and six months. All right, 20 years and six months. [at Fox] I resolved three things. That's all I resolved in 20 years and 6 months, I resolved three things and the only reason I did resolve them was to keep my children safe.

My biggest mistake was settling. You gotta understand how much pain this has caused me and my children. I would do anything for my children. That's why I did it.

62. O'Reilly then falsely claims that plaintiff Bernstein violated the confidentiality provisions of her settlement agreement, by stating, "in my case, all the confidentially stuff was – violated – every bit of it."

63. Defendant O'Reilly again defamed plaintiff and falsely accused her of breaching her agreement when he said: "We thought people would uphold their oath and what they agreed to do. They haven't."

64. On October 23, 2017, defendant O'Reilly stated on his podcast (hypocritically called "No Spin News") and/or posted on his website the following false, disparaging and

defamatory statements referring specifically to the settlements reached at Fox: “Smears in this country now . . . allegations are facts. No doubt about that. Papers don’t check anything out, they just print whatever allegations they want to print. And it’s devastating, and that brings me to the main point of this story. The New York Times knows that I cannot specifically refute anything. In 20 years, 6 months at the Fox News Channel, I resolved three situations. Three I resolved. And I did that to protect my children from harm. And I would do anything, anything to protect my children from harm. So it was three in 20 years and 6 months that I resolved. Part of the resolution is nobody talks about it. Now, obviously that’s been broken on the other side. But I can’t break it. Because if I do, that opens everything all up again and it’s insane.”

65. Defendant O’Reilly also said on that podcast that The New York Times “came back with a bunch of garbage” after having “attacked” him “in a very distorted way for these harassment deals” in April.

66. In another audio interview between Defendant O’Reilly and Glenn Beck (on Glenn Beck’s radio show, The Blaze: “Bill O’Reilly & Glenn Beck on the Opioid Crisis, Uranium One, and More News from the Week”), which was posted on October 27, 2017 on Defendant O’Reilly’s website, billoreilly.com, with the audio available at, <https://www.billoreilly.com/f/Audio-Center#play>, Defendant O’Reilly again states:

O’Reilly: There are two things here. When it comes to women being, um. mistreated, that’s the best word. Every American should want one thing - justice. Would you agree with that?

Beck: Yes.

O'Reilly: The other thing is verifiable is I've been in the business 43 years. Never once was there a complaint filed against me with any HR in 12 different companies. Verifiable.

67. On October 23, 2017, defendant O'Reilly stated on his podcast and/or posted on his website the following false, disparaging and defamatory statement: "The bottom line is that my enemies who want to silence me have made my life extremely difficult and have hurt me in the marketplace. Anybody who doesn't like me will believe all the stuff the smear merchants put out, but I'm interested in you, I'm interested in people who are fair-minded."

68. In the statements set forth above in Paragraphs 21 through 67, defendant O'Reilly was specifically referring to plaintiff as a member of the small group identified in the April 1, 2017 New York Times article. Plaintiff's claims are falsely portrayed by defendant O'Reilly as based on lies which are part of a conspiracy designed to "smear" him and "hurt him in the marketplace."

69. These statements were designed to disparage plaintiff Bernstein by falsely stating that she never complained about O'Reilly's abuse, by claiming that O'Reilly did nothing wrong, by claiming that plaintiff is "smearing" him in order "to silence" him, and by claiming that plaintiff violated her Settlement Agreement.

70. On October 23, 2017 defendant O'Reilly continued to spin false stories on his podcast and/or his website, falsely portraying himself as a victim, a truth teller, and an heroic father (while he is none of those things), by stating: "You know, am I mad at God? Yeah, I'm mad at him. I wish I had more protection." He went on to give advice which he has obviously and repeatedly ignored: "Never give up telling the truth. Never give up protecting your family..... I'm going to go down fighting and I'm going to go down telling the truth."

71. On November 29, 2017, Defendants' defamation campaign against plaintiff Bernstein continued, on O'Reilly's "No Spin News," available on BillOReilly.com, when O'Reilly compared his own situation - and those of other well-known male broadcasters who were taken off the air after harassment complaints were revealed - to being victims of "false accusations" akin to the Salem Witch trials and indicating that he intended to sue his accusers (which of course includes plaintiff) in court:

All right, so there's a lot of talk about here in America and I'm going to be very precise in my analysis tonight because it's a fact that we have now entered a very dangerous period in our republic. Today, Matt Lauer left NBC News because he was accused of something. * * *

So I was thinking maybe we move the media from New York City to Salem, Massachusetts.

* * *

I've been upfront on this from the very beginning. In my situation, I took the slings and arrows and I told my attorneys we'll abide by what we promised to do. But we are now going to confront everybody in court. That's where we're going to adjudicate, in my situation. We've already filed one lawsuit and we've got others ready to go.

No more. No more. ... I went on The Today Show knowing that Matt Lauer is going to ask me questions because that's what his NBC bosses wanted him to do. Did I mind those questions? I didn't mind them. I got my say loud and clear. You watch that interview, I got my point across. That's the only thing that I ask when I go on media.

* * *

Again, justice. No American should be abused in any way, shape, or form. If they are, they should go into the court where they can get a hearing. All right. No problem with that. But accusations are not facts. Accusers are not automatically victims. OK. The Duke lacrosse team. Do I have to say any more? I knew some of those families, destroyed because of false accusations that many in the media ran with all day long even though they had no blankin' idea what happened.(emphasis added)

72. The above false statements by O'Reilly published on November 29, 2017, defamed plaintiff Bernstein as a member of a small identifiable group and accused her of making false reports of sexual harassment and lying about O'Reilly.

73. Defendant O'Reilly also made it clear that he intentionally and maliciously "got his point" across when he defamed plaintiff on The Today Show. On or about December 14, 2017, in an interview on SKY News in London, Fox News CEO Rupert Murdoch, and co-Executive Chairman of 21st Century Fox, stated that the whole raft of harassment claims at Fox were "nonsense." He admitted "a problem" with "our chief executive" (Roger Ailes), falsely stating that they were "isolated incidents" and falsely stating that Ailes was "out of the place in hours - well three or four days and there's been nothing else since then." Murdoch further stated: "Now of course . . . but that was largely political because we are conservative. Of course, all the liberals are going down the drain. And NBC is in deep trouble. CBS - their stars . . . There are really bad cases that people should be moved aside and there are other which might've been a bit of flirting." In making these statements on behalf of Fox News, Murdoch disparaged and defamed plaintiff Bernstein. Roger Ailes was not the only harasser at Fox News. Bill O'Reilly harassed, abused or mistreated plaintiff. Murdoch knew that plaintiff had a valid claim and significant evidence when he disparaged and defamed her. Plaintiff's claims were never "nonsense" or "flirting" or because Fox News is "conservative." Murdoch, as CEO of Fox News, and co-Executive Chairman of 21st Century Fox, speaks on behalf of defendant Fox News as an authorized spokesperson and binds defendant Fox News and Defendant 21st Century Fox with his statements.

74. By disparaging plaintiff Bernstein, defendants Fox News and O'Reilly breached the contract they entered with plaintiff Bernstein in 2002.

75. By making statements other than the statement agreed-upon, defendants Fox News and O'Reilly breached the contract they entered with plaintiff in 2002.

76. As a direct and proximate result of the aforesaid breaches of contract, plaintiff Bernstein has suffered and will continue to suffer damages to her reputation, severe emotional distress, physical sickness, and loss of income.

77. Defendants O'Reilly and Fox are jointly and severally liable for the breach of contract.

COUNT TWO

(DEFAMATION)

78. Plaintiff repeats and incorporates the allegations set forth above as if fully set forth herein.

79. The aforesaid statements falsely portrayed the plaintiff as an extortionate, politically-motivated liar who was never mistreated and who has wrongfully and willfully harmed Mr. O'Reilly and his children.

80. The aforesaid statements are defamatory because they expose plaintiff to public contempt, ridicule, aversion and/or disgrace.

81. Defendants' defamatory statements are not protected by any privilege and are defamatory *per se*.

82. Plaintiff is not a public figure.

83. Defendants Fox News, 21st Century Fox, and O'Reilly willfully, recklessly and maliciously published the aforesaid statements of and concerning the plaintiff (a member of a small group clearly identified in the April 1, 2017 New York Times article).

84. Defendants Fox News and 21st Century Fox are directly liable under theories of *respondeat superior* as well as agency for the above-referenced defamatory statements of O'Reilly, all of which were made in the course and scope of his employment and agency relationship with both Defendants Fox News and 21st Century Fox.

85. Defendants Fox News and 21st Century Fox are directly liable under theories of *respondeat superior* as well as agency for the above-referenced defamatory statements made by Rupert Murdoch concerning the plaintiffs, and such defamatory statements were all made in the course and scope of his employment and agency relationship with both Defendants Fox News and 21st Century Fox and made for defendants' benefit.

86. Defendants Fox News and 21st Century Fox are independently liable for their own publishing and re-publishing of the defamatory statements made above, including but not limited to on the Fox website in the link to Sean Hannity's website.

87. Defendants Fox News, 21st Century Fox, and O'Reilly negligently published the aforesaid statements of and concerning the plaintiff (a member of a small group clearly identified in the April 1, 2017 New York Times article).

88. As a direct and proximate result of the aforesaid defamation, plaintiff has suffered and will continue to suffer damages to her reputation, severe emotional distress, physical sickness, special damages and loss of income.

89. Defendants O'Reilly, Fox News and 21st Century Fox are jointly and severally liable for the defamation.

WHEREFORE, defendants, Fox News, 21st Century Fox and O'Reilly, are jointly and severally liable to plaintiff for:

- (a) All damages recoverable for all causes of action released in the contract materially breached by defendants;
- (b) reputational damage;
- (c) economic damages;
- (d) damages for emotional harm and stress;
- (e) punitive damages;
- (f) attorneys' fees and costs of suit; and
- (g) Such other relief as the Court may deem equitable and just including special damages.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this action on all claims that are triable by a jury.

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BY: /s/ Neil Mullin

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